Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CIVIL REVISION NO. 23 OF 2007

APPLICANT : Ganga Singh Thakur, son of Shri Kashi Singh Thakur, resident of Chirhuldih Ward, Behind Vivekanand Ashram, Raipur (C.G.)

VS

RESPONDENTS : 1. State of Chhattisgarh, through the Secretary, Water Resources Department, Raipur.

2. The Executive Engineer, Bhatapara Canal Construction Division, Raipur.

P.R. No. 432 dt. 07/2/07
Presented by Shri Ganga Singh
dated 07/2/07

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REVISION PETITION UNDER SECTION 19 OF THE CHHATTISGARH MADHYASTHAM ADHIKARAN ADHINIYAM, 1983

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

CIVIL REVISION NO. 23 OF 2007

APPLICANT Ganga Singh Thakur

Versus

RESPONDENTS State of Chhattisgarh & Another

Present : Shri B.P. Sharma, counsel for the applicant.

Shri Prashant Mishra, Addl. Advocate General for the State/respondents.

ORAL ORDER
(Passed on 28th February, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This revision under Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (for short "the Adhiniyam, 1983") has been directed against the award dated 11-1-2007 passed in reference petition No.14/2005 by the Chhattisgarh Madhyastham Adhikaran, Raipur (for short "the Adhikaran") whereby the reference filed by the applicant has been dismissed.

2) Briefly stated facts of the case are that the applicant, who is a registered contractor and undertakes execution of civil engineering work entered into an agreement bearing No.19DL of 1978-79 with respondent State Authorities for construction of aqua-duct at Chainage 330 of Bhatapara Branch Canal. The estimated value of the work was Rs.7,28,000/-. Work order was issued by the Executive Engineer, Lower Mahanadi Division on 19-1-1979 with a limitation for completion of the work up to 18-2-1980. Applicant started his work and agreed to

accept payment of running bills. After measurement of work done by the applicant first running bill for Rs.66,779=95 has been paid to the applicant on 31-3-1979. Applicant's allegation is that, though his work was recorded in measurement book, but subsequently no amount after verification has been paid to him. Applicant has no option, but to stop his work which he did and asked the authorities to fulfill reciprocal obligation of making payment, but no steps have been taken by the Department. On the other hand, respondents repudiated the contract and communicated him vide letter dated 31-3-1980.

3) Applicant filed his claim for recovery of Rs.1,97,932=32 before the Department vide letter dated 8-7-1980. Feeling aggrieved by the inaction of the department, filed an application under Section 20 of the Arbitration Act, 1940 (for short "the Act, 1940") in the Court of District Judge, Raipur, for appointment of the Arbitrator in terms of the arbitral agreement. District Judge, Raipur, after due enquiry dismissed the application. Applicant feeling aggrieved approached the High Court of Madhya Pradesh, which vide its order dated 2-1-1991 advised the applicant to approach the Adhikaran. Pursuant to that applicant filed reference petition before the Adhikaran.

4) Adhikaran considered the reference on limitation, maintainability and also on the merit. Adhikaran held that the reference is barred by time and in view of the findings recorded by the District Judge, Raipur the reference not maintainable. Further on merit after appreciating the evidence adduced by the parties held that no justifiable ground was made out to the petitioner to stop the work and, therefore, his contract was rightly rescinded by the Executive Engineer. His claims for additional payment is also not made out in view of poor workmanship

(28)

and slow progress of the work, therefore, the authorities had rightly prepared a final bill, based on detailed measurement duly checked by the Sub Divisional Officer as well as by the Executive Engineer, which worked out in minus amount of Rs.76,956=20, accordingly, the reference has been dismissed by the Adhikaran.

5) Learned counsel appearing for the applicant contended that reference has been filed by the applicant as advised by the High Court of Madhya Pradesh by order dated 2-1-1991, therefore, the question of limitation and maintainability of the reference on the findings of District Judge does not arise. The Adhikaran without due consideration of the evidence adduced by the applicant has dismissed his reference on merit..

6) The High Court has been authorised in accordance with Section 19(2) of the Adhiniyam, 1983 to interfere with the award in case following conditions as envisaged in sub-section (2) of Section 19 of the Adhiniyam, 1983 are fulfilled :

> **"19. High Court's power of revision.**—(2) If it appears to the High Court that the Tribunal—
> (a) has exercised a jurisdiction not vested in it by law; or
> (b) has failed to exercise a jurisdiction so vested; or
> (c) has acted in exercise of its jurisdiction illegality, or with material irregularity; or
> (d) has misconducted itself or the proceedings; or
> (e) has made an award which is invalid or has been improperly procured by any party to the proceedings."

7) Dispute between the applicant and Department arises sometime in the year 1979-80. Applicant in order to get an Arbitrator appointed approached the Civil Court, but the District Judge, Raipur after due trial in civil suit No.11-B/80 vide order dated 30-11-1981 recorded his finding that the applicant was paid more than the work executed by him

and his contract was rightly repudiated because he had stopped the work on the pretext of non-payment. Since no dispute had existed between the parties, the District Judge declined to appoint any Arbitrator and dismissed the application. The High Court also dismissed the appeal in view of Section 20 the Act, 1940 with a direction that the applicant may well approach the Adhikaran. Adhiniyam, 1983 came into force on 1-3-1985. Under Section 20 of the Adhiniyam, 1983 after constitution of the Tribunal, the jurisdiction of the Civil Court was ousted, however, in accordance with sub-section (2) the arbitration proceedings pending before any Court were allowed to be continued as if Adhiniyam, 1983 had not come into force. Here in the instant case, much earlier to the coming into force of Adhiniyam, 1983 or constitution of the Tribunal, District Judge, Raipur, vide order dated 30-11-1981 recorded a finding that no dispute exist for reference to arbitrator and dismissed the application of the applicant and High Court of Madhya Pradesh also dismissed the appeal. Therefore, it appears that so far as existence of dispute in between parties was concerned, that was finally adjudicated by the competent Court and for the dispute raised by the applicant cause of action arose much earlier to the coming into force of the Adhiniyam, 1983. Having considered all these facts, the Adhikaran opined that the reference is not tenable having existence of the findings of a competent Court and the limitation started running from 28-3-1980.

8) Applicant himself to support his contention before the Adhikaran filed his affidavit. Department also filed affidavits of Shri MK Sachdeva and Shri H.S. Soni, who were the then Executive Engineers of the Division. Adhikaran considered the evidence of both the parties very

minutely and in detail and thereafter held that no justifiable ground was made out to the petitioner to stop the work and, therefore, his contract was rightly rescinded. It is pertinent to mention here that after measurement, Department was constrained to prepare final bill of minus amount of Rs.76,956=20 and after adjustment of earnest money and security deposit the State exchequer has to recover Rs.62,208=20 from the applicant.

9) We are of the considered opinion that the Adhikaran did not fail to exercise jurisdiction vested in it. Adhikaran also did not act with illegality or with material irregularity in passing the award. Adhikaran neither misconducted itself nor the proceedings. Therefore, we do not find any substance, which may call for interference in the award passed by the Adhikaran.

10) In the result, the revision being devoid of substance deserves to be dismissed and is accordingly dismissed. No costs.

Sd/- Chief Justice	Sd/- V.K. Shrivastava Judge